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BEFORE THE

# Federal Communications Commission

WASHINGTON, D. C.

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Federal Communications Commission
Office of the Secretary

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| In re Petition for Declaratory Ruling that Lenders May Take a Limited Security Interest in an FCC License | ) ) ) ) | MMB No. 910221A |

To: The Commission

ORIGINAL FILE

## PETITION FOR DECLARATORY RULING

Marvin J. Diamond
Gardner F. Gillespie
Susan Wing

HOGAN & HARTSON
555 13th Street N.W.
Washington, D. C.

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## SUMMARY

The law firm of Hogan & Hartson requests the Commission to issue a declaratory ruling that a third-party creditor may take a limited security interest in an FCC license. Such a security interest would give creditors the right to proceed against what is typically a broadcast station's most valuable asset and would give them a secured position against other, unsecured creditors.

On the one hand, making clear that security interests are permitted in licenses may help to ease the current paralysis in broadcast lending. Station owners who have been unable to obtain financing to make needed improvements in service may find loans more readily available. Other owners, who no longer desire to operate their stations, may more readily find buyers with the resources to support the station's operations.

On the other hand, allowing creditors a security interest in licenses will have no public interest detriments. The Commission already permits corporate licensees to pledge their stock. Allowing limited security interests in licenses would operate in much the same way.

A declaratory ruling is necessary because, in a series of cases beginning in the 1960s, the Commission issued loose _dicta_ that a security interest could not be obtained in a broadcast license. That _dicta_, which has taken on the aura of

an established Commission policy, is not supported by the Communications Act. The Act prohibits a licensee from obtaining a property interest in the _frequency_; it does not prohibit a licensee from giving a security interest in the _license_ itself. A security interest would not affect the FCC's unquestioned ability to approve or disapprove the renewal, assignment, or transfer of control of the license, and would not affect the Commission's long-standing policy prohibiting a transferring licensee from retaining a reversionary interest in the license. A security interest, which is merely an interest in whatever rights a licensee has in the license, would require that the sale of the license be at a "public or private sale".

Security interests are routinely obtained in other forms of licenses, and the Uniform Commercial Code expressly contemplates that rights under the Code are subject to other federal statutory requirements. Accordingly, the Commission may permit security interests in licenses without diluting its authority.

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In re Petition for Declaratory )
Ruling that Lenders May Take a )
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To: The Commission

PETITION FOR DECLARATORY RULING

I. Introduction.

Hogan & Hartson hereby requests a declaratory ruling that lenders may take a limited security interest in an FCC license. Prior rulings by the Commission to the effect that a license is not properly subject to a security interest are based on a misreading of the Communications Act, are exacerbating a difficult investment market, and are contrary to the public interest.

In requesting a declaratory ruling that parties may take a security interest in an FCC license, we wish to make clear what we do not seek in this filing.

- We do not question the FCC's authority to approve an assignment or transfer of control of the license;
- We do not request the Commission to reconsider its long-standing policy against allowing a transferring licensee to retain a reversionary interest in the license;

- We do not seek permission for any automatic transfer of a license to anyone under any circumstances;
- We do not contend that a licensee has any property right in its frequency of operation.

All that we mean to suggest here is that there is no reason for -- or statutory requirement -- prohibiting a security interest in a license. Similar to the Commission's historic allowance of stock pledges, a lender holding a security interest in a broadcast license should be permitted to force a "public or private sale" of the licensed facility, subject to FCC approval.

In several cases over the years dealing with unlawful reversionary interests in broadcast licenses, the Commission has issued loose dicta to the effect that a license may not be used to secure the interests of a station's creditors. 1/ The courts have relied on this dicta in refusing to recognize the validity of security interests in FCC licenses. See, e.g., Stephens Industries, Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986); In re Smith, 94 B.R. 220, 221 (Bankr. M.D. Ga. 1988). The result is that station financing is more difficult to obtain than would be the case were security interests

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1/ See discussion at pp. 5-10, infra.

available to lenders. These difficulties in obtaining financing adversely affect the public interest. Failing stations may have to reduce service, and where additional financing is unavailable, service improvement may not be possible. Would-be sellers may be forced to continue operations of stations they no longer desire or cannot support. Cf. Transfer of Broadcast Facilities, 52 R.R.2d 1081 (1982), modified on other grounds, Applications for Voluntary Assignments or Transfers of Control, 57 R.R.2d 1149 (1985). Especially considering the virtual paralysis in broadcast lending today, we respectfully submit that the Commission should re-evaluate its policy and declare that lenders may obtain limited security interests in broadcast licenses.

## II. A Lender's Inability to Obtain a Secured Position in Default Situations Makes Obtaining Credit More Difficult for Licensees.

A security interest is generally important and desirable to lenders for two reasons. First, it gives the secured party the right to proceed against particular assets in the event of default on the underlying debt. Second, it gives that party a secured position with respect to the proceeds from the sale of those assets against the rights of any subordinated or unsecured creditors.

The significance of a lender having or not having a security interest in an FCC license was most recently reflected in a decision of the United States Bankruptcy Court for the Western District of Oklahoma. <u>In re Oklahoma City Broadcasting Co., d/b/a KGMC-TV, Debtor</u>, 112 B.R. 425 (Bankr. W.D. Okl. 1990) . In that case, a bank had a security interest in virtually all of a broadcast station's assets other than the station's FCC license. The bank was owed somewhere between $2,700,000 and $3,300,000, and a third party had offered to pay $3 million for the assets in which the bank had a security interest. The bank asserted a priority claim to the $3 million, arguing that it reflected the fair market value of the assets as a going concern. The court, however, held that the assets of a broadcast station, absent its FCC license, could not be valued on a going concern basis. <u>Id.</u> at 429. Rather, the court held that the assets must be valued on a liquidation basis, which here was only $2 million. The absence of a security interest in the license meant that the bank had a priority over subordinated and unsecured creditors only for $2 million of the $3 million offer. The bank's priority was thus significantly less than the amount of its outstanding loan.

In the past, when the values of broadcast stations generally were increasing year to year by significant margins, and where credit for broadcast acquisitions was readily available, there may have been little practical significance to the inability of lenders to obtain security interests in broadcast licenses. But today, with station values stabilizing and even decreasing in many cases, with an increase in station bankruptcies, and with a severe credit shortage, the inability of a lender to obtain a security interest in a broadcast license substantially reduces the collateral that can be used to secure a loan. The result is that parties seeking to acquire or refinance stations must provide increased equity and outside collateral. Credit is made that much more difficult for acquisition financing and station refinancing.

## III. The Commission Should Permit Lenders to Take Security Interests in Broadcast Licenses.

### A. The Commission's Language Limiting the Ability of a Creditor to Take a Security Interest in a Broadcast License is Dicta and Unsupported by Precedent or Policy.

The Commission, with the full support of the courts, has never wavered from the principle that no one gains, by virtue of a broadcast license, any rights to use the frequency beyond the terms of the license. See, e.g., The Associated Broadcasters, Inc., 6 F.C.C. 387, 395 (1938) ("The holding of a license may not vest in the licensee any right to operate the station or any right to the use of the frequencies designated beyond the terms and conditions of such license."); Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945). The licensee is not only bound by the length of the license term, but also by broad, and continuing, public interest obligations. Any licensee failing to meet those obligations risks revocation or denial of renewal. See, e.g., L. B. Wilson, Inc. v. FCC, 170 F.2d 793, 798 (D.C. Cir. 1948); Ashbacker Radio Corp., 327 U.S. at 331-32.

At the same time, the Commission has steadfastly protected its right to prior review of the qualifications of any assignee or transferee of a license. See, e.g., Travelers Broadcasting Service Corp., 7 F.C.C. 504 (1939); Procedure on Transfer and Assignment of Licenses, 4 R.R. 342 (1948). It is unquestioned that a licensee may not provide for the automatic transfer of the license to a specified individual without prior FCC consent. 47 U.S.C. § 310(d); WCBD, Inc., 3 F.C.C. 467 (1936). And, in order to avoid a situation where a prior owner retains an ability to control the station's operation, the Commission has firmly rejected not only any automatic reversionary interest in a license, see, e.g., Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 99 F.C.C.2d 1249 (1985) ("Minority Ownership"), but also a reversionary interest where the Commission's ability to review the licensee's qulifications is preserved.

> [T]he assignee must have complete freedom to operate the station in the public interest, a freedom which inevitably carries with it the duty of independent decision. If such assignee subsequently chooses to dispose of his license, the public interest requires that a choice be made from the whole field of possible successors, and not be limited to the party from whom the facilities were obtained in the first instance.

The Yankee Network, Inc., 13 F.C.C. 1014, 1020 (1949).

None of these policies creates insurmountable difficulties in obtaining financing for station acquisitions, and none is challenged here. But the Commission has also developed a policy prohibiting any creditor from obtaining a security interest in a Commission licensee. Unlike the policies noted above, the prohibition on security interests is rooted in neither the Communications Act nor any longstanding and well-articulated Commission analysis.

Although language in some Commission decisions, see, e.g., Radio KDAN, Inc., 13 R.R.2d 100, 102 (1968), aff'd on procedural grounds, W.H. Hanson v. FCC, 413 F.2d 334 (D.C. Cir. 1969), implies that a general restriction on all security interests in broadcasting stations is based on longstanding and reasoned Commission policy, that is not the case. 2/ In fact, the restriction appears to stem most directly from the 1965 decision of Twelve Seventy, Inc., 6 R.R.2d 301 (1965). Twelve Seventy was a garden-variety transfer/renewal case where a

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2/ There does exist an historic line of cases prohibiting any automatic reverter on the basis of a mortgage or lien on the station's operations. See, e.g., Magnolia Petroleum Co., 6 F.C.C. 605, 607 (1938). But these cases rely primarily on the Commission's authority under Section 310 of the Act to approve all transfers and assignments and do not address the situation where financing is provided by some party other than the seller.

station's renewal application had been designated for hearing on character grounds, and the licensee had filed for bankruptcy. The bankruptcy trustee sought to have the license renewed and transferred without consideration of the existing licensee's qualifications. Consistent with Commission precedent, 3/ the Commission rejected the trustee's request, holding that "[i]f the evidence establishes that [the licensee's] principals lack the character qualifications to be licensees, a denial of the renewal application may be required despite any resultant financial loss to the creditors of the station." Id. at 303. Also consistent with precedent, the Commission reiterated that "a broadcast authorization confers upon the holder only a privilege subject to very definite conditions and limitations and the license may not be equated with the buildings and equipment to which the licensee has acquired title. The creditor stands in no better position than the broadcaster." Id. at 304. All of this was unassailable boilerplate. But unaccountably, the Commission added further in dicta that, "[c]redit cannot be extended in reliance upon the license as an asset from which the licensee's obligations may be satisfied, and the creditor must assume the risk that

3/ See, e.g., Independent Broadcasting Co. v. FCC, 193 F.2d 900 (D.C. Cir. 1951), cert. denied, 344 U.S. 837 (1952); G.A. Richards, 14 F.C.C. 429 (1950).

for good cause shown a license may be revoked, or that a renewal thereof may be denied or an authorization for assignment refused as inconsistent with the public interest." Id. at 304.

There has never been any question that creditors assume the risk that a station's license may be revoked or not renewed. See, e.g., Ashbacker, 326 U.S. at 331-332. But if the statement meant that creditors could not rely on the station license as an asset for purposes of meeting the obligations of the station, that concept was a new one.

Still, taken in context, the statement did not necessarily compel a conclusion that no security interest could be taken in the license. The paragraph as a whole was simply a confirmation of the Commission's unquestioned ability to refuse to renew or to approve the transfer of a license, regardless of the desires of station creditors. Commissioners Cox and Lee dissented, stating that even if "'the license was not to be equated with the building and equipment to which the licensee has acquired title,' * * * that does not automatically compel the conclusion that creditors may not rely in good faith upon the expectation that if their broadcast debtor becomes insolvent, the trustee appointed to administer his estate will be allowed to sell his physical assets and assign his license so as to effect a transfer of the station as a going business -- all with the Commission's approval, of course." Twelve

Seventy, Inc., 6 R.R.2d at 305. The dissenters argued that, under the circumstances, the public interest would be served by renewing the license and allowing it to be transferred for the benefit of the creditors. There is no evidence that either the majority or the dissenters understood the decision flatly to prohibit a creditor from taking a security interest in the license.

Nevertheless, three years later the concept that a license could not be used as security for a debt under any circumstances emerged full-blown in Radio KDAN, Inc., 13 R.R.2d 100 (1968). Radio KDAN again presented a garden-variety fact situation, this time involving a contractual automatic reversionary interest of a prior seller of the station. Consistent with an uncontested line of precedent, the Commission refused to honor the contractual provision. But the Commission went on to state in dicta: "The extraordinary notion that a station license issued by this Commission is a mortgageable chattel in the ordinary commercial sense is untenable." Id. at 101, quoting Radio KDAN, Inc., 12 R.R.2d 584, 585 n.1 (1968). Furthermore, the Commission added that "[t]he Commission has consistently held that a broadcast license (as distinguished from a station's plant or physical assets) may not be hypothecated by way of mortgage, lien, pledge, lease, etc." Id. at 102. The Commission cited no precedent other than to assert that the "principle" derived "ultimately" from Section 301 of the Communications Act.

Radio KDAN's suggestion that the Communications Act prohibits the granting of a security interest in a license was further expanded by the Commission in several decisions in the early 1980s. In Kirk Merkley, 94 F.C.C.2d 829, 830 (1983), recon. denied, 56 R.R.2d 413 (1984), the Commission cited Sections 301, 304, 309(h), and 310(d) of the Act for the proposition that a broadcast license "is not an owned asset or vested property interest so as to be subject to a mortgage, lien, pledge, attachment, seizure or similar property right." 4/ And in considering ways to increase minority ownership in broadcasting, the Commission stated its belief that the Supreme Court had affirmed the principle "that a broadcast license does not confer a property right." Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 99 F.C.C.2d at 1253, citing

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4/ The Merkley case had its own idiosyncratic facts: a contractual provision permitting the seller to retain a reversionary interest was eliminated before the transaction was authorized by the Commission, yet in ruling later on the contractual rights of the parties, the Utah courts treated the provision as binding. Because the Receiver's claim was thus based on an unauthorized reversionary interest, the Commission refused to recognize it or to undo another already-consummated sale of the station the Commission had previously approved.

Ashbacker Radio Corp. v. FCC, 326 U.S. at 331-332; FCC v. Sanders Bros. Radio Station, 309 U.S. 470, 475 (1940).

The development of these Commission precedents -- from Twelve Seventy and Radio KDAN in the 1960s to Merkley and Minority Ownership in the 1980s -- does not reflect the "longstanding and firmly established principle" that the Commission has implied. Minority Ownership, 99 F.C.C.2d at 1253. 5/ To the contrary, the "principle" is only recently created and is based on dicta and a misreading of the Act and judicial decisions.

B. Nothing in the Communications Act Prevents A Creditor From Obtaining a Limited Security Interest in a License.

Much of the Commission's confusion regarding security interests stems from a misreading of Sections 301, 304, and

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5/ The cases the Commission has cited in support of the "principle" that a license may not be subject to a security interest do not establish that proposition. See, e.g., Churchill Tabernacle v. FCC, 160 F.2d 244 (D.C. Cir. 1947) (reverter provision in contract not permitted); Bonanza Broadcasting Corp., 11 R.R.2d 1072 (1967) (no transfer permitted of bare license where station was dark and had no equipment); The Yankee Network, Inc., 13 F.C.C. 1014 (1949) (assignment denied where lessor to retain an interest in station's gross income); Alabama Polytechnic Institute, 7 F.C.C. 225 (1939) (assignment denied where agreement to lease station provided that, at expiration of lease, parties would apply to FCC for assignment back to lessor); The Associated Broadcasters, Inc., 6 F.C.C. 387 (1938) (lease providing for possession of station by lessor at termination of lease prohibited).

309(h) of the Communications Act. 6/ Section 301 of the Act, a general jurisdictional provision, establishes federal government control over radio channels, provides for "the use of such channels but not the ownership thereof," and requires a license for radio transmissions. The Section states that "no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license," implying that rights are created consistent with the terms and conditions of the license. 7/ Section 304 affirms that a licensee does not own the licensed frequencies by requiring all licensees to waive any claim "to the use of any particular frequency or of the electromagnetic spectrum" beyond the terms of the license. Section 309(h) states the general terms and conditions of licenses. Specifically, Section 309(h) provides that a license does not "vest in the licensee * * * any right in the use of the frequencies designated in the license beyond the term thereof." Nowhere in these sections of the statute is there

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6/ See, e.g., Merkley, supra, and Minority Ownership, supra.

7/ See, e.g., L.B. Wilson, Inc. v. FCC, 170 F.2d 793, 798 and n.5 (D.C. Cir. 1948) (acknowledging that "a broadcasting license confers a private right, although a limited and defeasible one," and that it is "more than a mere privilege or gratuity").

any suggestion that a licensee may not grant a security interest in the license itself. 8/

The Commission's interpretation that the Act prohibits any form of license hypothecation is based on the mistaken principle that a broadcast license -- as opposed to the licensed frequencies -- is not an "owned" asset. Review of the statute's legislative history, however, clearly reveals that Congress' concern in enacting the predecessors to Sections 301, 304, and 309(h) was to deny licensee acquisition of ownership rights in the radio spectrum itself, not in the license.

The relevant provisions of Sections 301, 304, and 309(h) of the Communications Act were first contained in Sections 1, 5, and 11 of the Radio Act of 1927. 9/ The legislative history of the Radio Act shows that the "intent and purpose" of these three corresponding provisions was "to deny

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8/ Similarly, Section 310(d) -- also referenced by the Commission in Merkley and Minority Ownership -- contains no such proscription. Section 310(d) provides that no license may be assigned or transferred without the Commission's prior approval.

9/ Sections 1, 5, and 11 of the Radio Act are reproduced in Appendix A. Comparison of the language of these sections with the language of Sections 301, 304, and 309(h) of the Communications Act shows that the Radio Act provisions are materially identical to the relevant Communications Act provisions.

[licensees] the right to acquire a vested right in the ether." 10/ Indeed, as explained by Senator Dill,

> The conferees on the part of the Senate gave more attention to the protection of the rights of the Government in the control of radio against vested rights being secured by

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10/ 68 Cong. Rec. S2870 (daily ed. Feb. 3, 1927). Senator Dill, Senate sponsor of the Radio Act and its "principal architect," Columbia Broadcasting System v. Democratic National Committee, 412 U.S. 94, 106 (1973), explained the purpose of the three provisions during the Senate debate preceding adoption of the Senate-House Conference Report:

> We have the three provisions if I may summarize for the senior Senator from Nebraska. We have the provision, first, that no license shall be construed to give the licensees any rights not given in the license. We have the provision that makes them sign a waiver that they do not claim any right to use the ether or any wave length as against the regulatory power. We have a provision that the license must state on its face that the licensee secures no rights beyond the time for which the license is granted.
>
> Mr. BORAH. May I say to the Senator that I am trying to get at what the language really means. I understand it to be the view of the Senator, and also of the conferees, that they have by this bill, as they understand it, undertaken to deny the right to acquire a vested right in the ether.
>
> Mr. DILL. That is the belief of the conferees.
>
> Mr. BORAH. That is the intent and purpose of the bill?
>
> Mr. DILL. Yes; that is the intent and purpose of the bill.

> anyone than to any other one phase of the resolution. I do not believe, with the [three] provisions which I have mentioned, that any man who will study the legislation can find in it justification for the claim that the operator of a station will get a vested right in the <u>air</u>.

68 Cong. Rec. at S2870-71 (emphasis added). 11/ Another Senate conferee, Senator Watson, expressed this concern with similar emphasis: "[W]e were so exceedingly anxious to prevent any vested right in any <u>wave length</u> or any right to use the <u>ether</u> for any purpose other than [as] prescribed in the license that we added the other two restrictions [in addition to Section 1]." <u>Id.</u> at 2871 (emphasis added).

As the legislative history makes clear, the legislators' concern was that radio operators would claim, by virtue of their use of certain frequencies prior to the adoption of the Radio Act, "a vested right to the use of the ether." Such a claim had, in fact, already been asserted by the American Telephone & Telegraph Co., operator of WEAF in New York. <u>Id.</u> at 2870. And a similar claim had been recently upheld by a state court in <u>Tribune Co.</u> v. <u>Oak Leaves Broadcasting Station</u> (Cook Co., Ill., Cir. Ct. 1926), a

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11/ The terms "radio frequency" and "radio spectrum" were apparently not yet in use in 1927. The Radio Act and its legislative history, instead, refer to the spectrum variously as "air," "ether" and "wave lengths."

decision that was reprinted in the Congressional Record at Senator Dill's request. 68 Cong. Rec. 216 (1926). In that case, the court had held that the licensee of a station, "by reason of the outlay and expenditure of money and the investment of time" had acquired property rights in its operating frequencies, and the court had enjoined the operation of a second station on interfering frequencies. Id. at 219; see also H. Warner, Radio and Television Law at 541-542.

Although the legislative history of Sections 301, 304, and 309(h) is emphatic that a licensee shall acquire no property right in assigned frequencies, there is no indication that acquisition of property rights in the license itself was forbidden or limited in any way. To the contrary, the legislative history is clear that Congress understood radio authorizations would be valuable property. For example, during Senate hearings on the bill, one Senator recognized that "a licensee gets a great value because of restricted wave lengths in the mere ownership of an apparatus * * * . [T]he apparatus may have cost him $50,000, but the fact that he has got the wave length and has got the apparatus may make that license and equipment combined worth several hundred thousand dollars." Senate Hearing on S.1 and S.1754, at 46 (1926). The Solicitor of the Department of Commerce testified that "I have no doubt that the broadcasting privilege is going to be of very considerable value, the same as any other franchise becomes of value." Id. at 88. Neither the Radio Act nor the successor Communications Act restricted acquisition of such property interests or commercial transactions that relied on them. Instead, Senator Dill acknowledged the acquisition of property rights consistent with the license: "[N]obody shall acquire the ownership of a radio channel for radio broadcasting, but he can only acquire a use for a limited period of time as mentioned in the license." 68 Cong. Rec., supra note 9, at 2871.

C. The Supreme Court Decisions Do Not Mandate the Policy Against Allowing Security Interests in Broadcast Licenses.

In reciting its view that a broadcast license may not be the subject of a security interest in the Minority Ownership proceeding, the Commission relied on FCC v. Sanders Bros. Radio Station, 309 U.S. 470 (1940), and Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945). But these cases only serve to emphasize what the legislative history of the Act makes clear -- that no licensee obtains an ownership interest in the radio spectrum. The cases do not address the extent of a licensee's interest in the license. When the Court stated in Sanders Bros. that "no person is to have anything in the nature of a property right as a result of the granting of a license," 309 U.S. at 475, the Court was merely recognizing that "[l]icenses are limited to a maximum of three years' duration, may be revoked, and need not be renewed." Id. In Ashbacker, the Court quoted the Sanders Bros. language for the proposition that "[n]o licensee obtains any vested interest in any frequency." 326 U.S. at 331. The Court did not, in either case, indicate that a licensee could not have a property interest in the license.

### D. The Commission Has Recently Correctly Recognized That a Bare License Has Value and Conveys a Limited Property Interest.

Although not directly reconsidering whether a licensee may give a security interest in a license, the Commission has recently reversed a long-standing policy against sale of a "bare" Commission authorization for unbuilt facilities. In Bill Welch, 3 F.C.C. Rcd. 6502 (1988), the Commission departed from its prior statements that licenses do not convey a property interest. See, e.g., Minority Ownership, 52 R.R.2d 1301, 1310 (1982). The Commission clearly recognized in Welch the difference between an ownership interest in a frequency -- prohibited under the Act -- and limited rights in the license:

> It is important to note that the fact that Section 301 provides that licensees may have no "ownership" interests in frequencies does not mean that they have no rights in the license itself:
>
>> While a station license does not under the Act confer an unlimited or indefeasible property right [citation omitted] -- the right is limited in time and quality by the terms of the license and is subject to suspension, modification or revocation in the public interest -- nevertheless the

> right under a license for a definite term to conduct a broadcasting business requiring -- as it does -- substantial investment is more than a mere privilege. A broadcasting license is a thing of value to the person to whom it is issued. [P]rovisions of the Communications Act itself * * * recognize that a broadcasting license confers a private right, although a limited and defeasible one.

3 F.C.C. Rcd. at 6503 n.27, citing L.B. Wilson, Inc. v. FCC, 170 F.2d 793, 798 (D.C. Cir. 1948) (citing, inter alia, Section 301).

The Commission also recognized in Welch that the purpose of Sections 301 and 304 of the Act was to prevent licensees from asserting ownership interests against the government:

> As suggested by the plain meaning of [the] language [of Sections 301 and 304], these Sections constitute "assurances of federal control," not restrictions on the sale of bare authorizations. See [H. Warner, Radio and Television Law at 544 (1948)]. The "underlying objective" of these provisions was simply "that no proprietary interests in a license or frequency can be asserted against the regulatory processes of the United States." Id.

3 F.C.C. Rcd. at 6503 n.30.

The Commission stated in Welch that "[t]he language [of Sections 301 and 304] does not bar the for-profit sale to a private party, subject to prior Commission approval, of whatever private rights a permittee has in its license." Id. at 6503 (footnotes omitted). Similarly, the Commission should now hold that those rights may be the subject of a security interest. The Act was never intended to prevent a station creditor from obtaining through a security interest a preference as against other, more junior creditors.

### E. Rights to Other Types of Licenses Are Subject to Security Interests.

Courts have recognized that allowing other agencies' licenses and authorizations to be the subject of security interests does not abridge the regulating agencies' authority or eliminate the agencies' role in approving license transfers. For example, In re Gull Air, Inc., 890 F.2d 1255, 1260 (1st Cir. 1989), held that despite the FAA's assertion that landing slots were merely an "operating privilege subject to absolute FAA control," quoting 14 C.F.R. § 93.223(a) (1989), an entity's "possessory interest [in the slots] must constitute property of the estate." And in In re American Central Airlines, Inc., 152 Bankr. 567, 571 (N.D. Iowa 1985), the court noted that "[t]he mere fact that an interest exists by the grace of government no longer precludes the interest from being treated as a property right." Similarly, the Seventh Circuit held in In re Rainbo Express, Inc., 179 F.2d 1, 5 (7th Cir.), cert. denied, 339 U.S. 981 (1950), that a certificate of public convenience and necessity issued to an interstate motor carrier by the Interstate Commerce Commission could be pledged to a creditor: